

## **REMARKS**

The above Amendments and these Remarks are in reply to the Office Action mailed June 22, 2006. Claims 1-3 were pending in the Application prior to the outstanding Office Action. Claims 1-3 are being amended, and claims 4-6 are being added. The amendments and new claims are supported by the specification as originally filed, by for example paragraphs [0054]-[0061] and FIGS. 1-3, as well as by further portions. Thus, no new matter has been added. Claims 1-6 remain for the Examiner's consideration, with claims 1, 2 and 3 being independent. Based on the above amendments, and the following remarks, reconsideration and withdrawal of the outstanding rejections are respectfully requested.

### **I. SUMMARY OF CLAIM REJECTIONS UNDER 35 U.S.C. § 103**

Claims 1 and 3 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Kaplan (U.S. Patent No. 6,514,193), in view of Congilione (U.S. Patent No. 5,713,828). Claim 2 was rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Kaplan (U.S. Patent No. 6,514,193), in view of Congilione (U.S. Patent No. 5,713,828), and further in view of Rapach et al. (U.S. Publication No. 2004/0015037).

### **II. DISCUSSION OF THE CLAIMS**

**Claim 1**, as amended, specifies the heating of the elongate member, that is inserted through the hollow bore of a plurality of radioactive seeds, to cause the elongate member to expand, to thereby capture said radioactive seed elements at intervals. Applicants assert that Kaplan's mention of melting a spacer to a seed does not teach or

suggest this claimed feature. Further, Conglione does not teach the deficiencies of Kaplan.

**Claim 2**, as amended, specifies that a material is flowed through bores and between radioactive seed elements that are arranged end-to-end, without substantially encapsulating the radioactive seed elements. The resulting therapeutic element would thus resemble what is shown in FIG. 2 of the present application. In contrast, if the seeds of Kaplan were used to form a therapeutic element, using the teachings of Rapache, the resulting therapeutic member would be completely (or at least substantially) encapsulated, e.g., as shown in FIG. 1 of Rapache.

**Claim 3**, as amended, specifies that an elongate material is inserted through the hollow bores of a plurality of seeds, and that portions of the elongate member that are adjacent the two ends of each seed element are crimped, so that the crimped portions do not fit through the hollow bores of the seed elements, to thereby capture the radioactive seed elements at intervals. In contrast, Conglione states that a “spacer 52 can be connected to seed 10 by direct attachment such as by gluing, crimping, or melting” (see column 15, lines 2-3). In other words, Conglione is saying that a spacer can be crimped to a seed to directly attach the spacer to the seed. Conglione is clearly not teaching or suggesting that portions of the elongate member that are adjacent ends of seeds are being crimped so that the crimped portions do not fit through hollow bores of the seeds.

For at least the reasons set forth above, Applicants respectfully request that the 103(a) rejections of claim 1-3 be reconsidered and withdrawn.

### **III. DOUBLE PATENTING**

Claim 1 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 7,008,368. While Applicants do not necessarily agree with this rejection, Applicants are filing Terminal Disclaimers herewith to overcome this rejection and expedite issuance of the pending claims.

### **IV. CONCLUSION**

In light of the above, it is respectfully requested that all outstanding rejections be reconsidered and withdrawn. The Examiner is respectfully requested to telephone the undersigned if he can assist in any way in expediting issuance of a patent.

A Check in the amount of \$470.00 is enclosed to cover the required fees. The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 06-1325 for any matter in connection with this reply, including any fee for extension of time, which may be required.

Respectfully submitted,

Date: November 17, 2006

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